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5 BEFORE THE STATE AUDITOR  
6 AND COMMISSIONER OF SECURITIES  
7 HELENA, MONTANA

8 IN THE MATTER OF: ) Case No.: I-11-08-04-01  
9 MARTIN BOWER, )  
10 Respondent. ) TEMPORARY CEASE AND DESIST  
11 ) ORDER  
12 )

13 The State Auditor in his capacity as ex-officio Commissioner of Securities of the State of  
14 Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, §§ 30-10-  
15 101, et seq., Mont Code Ann. (2003), hereby issues the following allegations of fact, proposed  
16 conclusions of law, order and notice of right to a public hearing:

17 ALLEGATIONS

18 1. Bower is not now registered nor has he ever been registered as an investment  
19 advisor in Montana, pursuant to § 30-10-201 (3), MCA.

20 ALLEGATIONS SPECIFIC TO VIOLATIONS OF § 30-10-201 (3), MCA

21 2. The Department realleges by incorporation the facts contained in paragraph 1,  
22 herein.

23 3. On or about August 9, 2004, staff of the Department received a complaint from a  
24 Montana citizen identified herein as "HZ" alleging that HZ was unable to get HZ's stock  
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1 certificates from HZ's account at Raymond James, broker-dealer firm. HZ is 86 years of age and  
2 resides at an assisted living facility in Kalispell, Montana.

3 4. On or about August 10, 2004, HZ again contacted the Department and alleged  
4 that Bower visited HZ at the assisted living facility and urged HZ to sell HZ's Glacier Bancorp  
5 stock to purchase an annuity from Banker's. HZ had stock holdings with Glacier Bancorp in  
6 excess of \$500,000. HZ also alleged that Bower convinced her to purchase an additional annuity  
7 using \$179,000 in proceeds from HZ's savings account.

8 5. The Department investigated HZ's complaint, contacting Jean Luckey (Luckey)  
9 on or about August 9, 2004. Luckey is HZ's sales representative from Raymond James. Luckey  
10 indicated she became HZ's sales representative after Michael Blodnick (hereafter "Blodnick"),  
11 the president of Glacier Bancorp referred Luckey to HZ.

12 6. The Department contacted Blodnick as part of its investigation. Blodnick  
13 indicated to the Department that he had contacted Luckey in July 2004 with concerns because  
14 HZ's spouse had died in the last year and the spouse handled all the finances during their  
15 marriage. HZ indicated to Blodnick that HZ had lots of stock certificates and did not know what  
16 to do with them. Blodnick recommended Luckey to HZ as a person who could help HZ with the  
17 safekeeping of the stock certificates. Blodnick was aware that someone wanted to liquidate the  
18 entire portfolio valued in excess of \$500,000. HZ contacted Blodnick concerned that Luckey  
19 may have stolen the stock certificates because the person wanting to liquidate HZ's stock  
20 certificates convinced HZ that this was happening. Blodnick calmed HZ's fears by explaining  
21 HZ's brokerage statements indicated the stock certificates were intact.

22 8. In August 2004, HZ contacted Luckey asking Luckey to come to HZ's assisted  
23 living apartment with copies of the certificates. When Luckey arrived at HZ's apartment, Bower  
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1 was present in the apartment. HZ indicated to the Department that Bower told HZ that he could  
2 sell the stock certificates for HZ.

3 9. HZ indicated to the Department that HZ subsequently cancelled the check from  
4 HZ's savings account when HZ became concerned about the safety of the Banker's annuity.  
5 Additionally, HZ indicated to the Department that HZ decided not to purchase the annuity  
6 because Bower was too insistent, utilizing "pushy" sales tactics. HZ also indicated Bower did  
7 not provide HZ with the beneficiary information he had promised.

8 10. On or about November 4, 2004, the Department received a complaint from a  
9 Montana citizen identified herein as "LL". LL indicated to the Department that LL's parent,  
10 herein identified as "IRL" suffers from Alzheimer's disease and resides in a small home abutting  
11 LL's own home. LL also indicated that IRL's Alzheimer's is readily apparent to anyone and that  
12 she has virtually no short-term memory. LL indicated that Bower had contacted IRL by coming  
13 personally to her home on several occasions attempting to convince IRL to liquidate IRL's  
14 securities portfolio in order to purchase a Banker's annuity product. LL indicated that IRL is 79  
15 years of age.

16 11. The Department investigated LL's complaint. Tim Skiftun ("Skiftun") is IRL's  
17 sales representative at Merrill Lynch, the broker-dealer firm where IRL's securities are held.  
18 Based on conversations with Skiftun's assistant, the Department alleges that Bower sent two  
19 different Banker's "Authorization to Transfer Funds" forms signed by IRL and Bower to Merrill  
20 Lynch on or about October 15, 2004. The forms indicated IRL and Bower signed them on or  
21 about October 7, 2004. On or about October 19, 2004, Skiftun called IRL to clarify what IRL  
22 wanted to do with her securities portfolio as it was unclear based on the submitted forms. IRL  
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1 did not recall signing the forms when Skiftun called IRL. IRL indicated to Skiftun that IRL did  
2 not want to move her accounts or to purchase an annuity.

3 12. On or about October 26, 2004, IRL sent a letter to Banker's indicating IRL did  
4 not want to purchase an annuity, nor did IRL want to liquidate or transfer her securities portfolio.  
5 Then, on or about November 1, 2004, Bower again convinced IRL to sign a Banker's  
6 "Authorization to Transfer Funds" form with an indication that IRL's portfolio was to be  
7 liquidated in its entirety. IRL did not remember signing the earlier transfer forms, nor did she  
8 remember sending the letter to Banker's dated October 26, 2004. Banker's submitted the new  
9 form to Merrill Lynch on or about November 3, 2004.  
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11 13. On or about November 5, 2004, IRL sent a letter to Skiftun instructing Skiftun not  
12 to process any transfer requests, not to liquidate any assets and not to take any instructions  
13 without IRL's express oral and written permission. LL assisted IRL in the preparation of this  
14 letter to Skiftun.

15 14. The Department's investigation of Bower indicates that Bower acted as an  
16 unregistered investment advisor or investment advisor representative when he advised HZ and  
17 IRL to sell their securities to buy an annuity from Banker's and that annuity purchase would  
18 result in compensation to Bower.

19 **ALLEGATIONS RELEVANT TO VIOLATION OF § 30-10-301, MCA**

20 15. The Department realleges by incorporation the facts contained in paragraphs 1-14,  
21 herein.  
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23 16. The Department's investigation of Bower has determined that Bower, while  
24 acting as an investment advisor, acted fraudulently when he failed to inform HZ and IRL that he  
25 lacked sufficient relevant facts, such as tax consequences for HZ and IRL in the event of

1 liquidation of their securities, to determine whether the securities transactions he recommended  
2 to HZ and IRL were suitable for them. Bower ignored relevant information about his potential  
3 client when he acted in spite of IRL's obvious Alzheimer's induced short-term memory losses.  
4 Bower ignored relevant information about his potential client when he ignored HZ's inability to  
5 understand the impact of storing original stock certificates in her closet.

6 17. The Department's investigation of Bower has determined that Bower, while  
7 acting as an investment advisor, acted fraudulently when he failed to inform HZ and IRL that he  
8 was required to be registered before conducting investment advisor business.

9 18. The Department's investigation of Bower has determined that Bower, while  
10 acting as an investment advisor, engaged in an act, practice and course of business that operated  
11 as a fraud on HZ and IRL when he recommended the sale of their securities without first  
12 ascertaining whether the securities sales were suitable for HZ and IRL. Additionally, Bower  
13 acted fraudulently when he informed HZ he could liquidate HZ's Glacier Bancorp stock  
14 certificates that were valued in excess of \$500,000. Bower further committed fraud when he  
15 convinced HZ that Luckey was stealing HZ's stock certificates, which Bower knew was not true.  
16 Bower engaged in an act, practice and course of business that operated as a fraud on IRL when  
17 he convinced IRL to sign fund transfer forms in spite of IRL's obvious short-term memory loss  
18 and in spite of the fact that IRL had indicated in writing that this was not what IRL wanted.  
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#### 21 CONCLUSIONS OF LAW

22 1. The Montana State Auditor is the Securities Commissioner. MCA § 30-10-107.

23 2. The administration of the Securities Act of Montana, MCA § 30-10-101 et seq., is  
24 under the supervision and control of the Securities Commissioner. MCA § 30-10-107.  
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1           3.     The Securities Act of Montana shall be construed to protect investors, persons  
2 engaged in securities transactions, and the public interest. MCA § 30-10-102

3           4.     Pursuant to MCA § 30-10-103(11), an investment advisor counsels others for  
4 compensation, direct or indirect, as to the value of securities or as to the advisability of investing  
5 in, purchasing, or selling securities.

6           5.     Pursuant to MCA § 30-10-201(3), it is unlawful for a person to act as an  
7 investment advisor without first being registered as such with the Department.

8           6.     By rendering advice regarding the value and sale of securities to persons in  
9 Montana for compensation, Bower acted as an unregistered investment advisor in violation of  
10 MCA § 30-10-201(3).

11           7.     Additionally, by recommending that persons sell securities without grounds to  
12 believe that the recommendation is suitable for that person based upon reasonable inquiry  
13 concerning that person's investment objectives, financial situation and needs, and any other  
14 relevant known information, Bower acted fraudulently, in violation of § 30-10-301, MCA.

15           8.     Pursuant to § 30-10-305 (3), MCA, the Commissioner may impose an  
16 administrative fine not to exceed \$5,000.00 per violation upon a person found to have engaged in  
17 any act or practice constituting a violation of parts 1 through 3 of the Securities Act of Montana  
18 or any of its regulation.

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21                   ORDER

22           Pursuant to §30-10-305(1)(a), MCA, it appears to the Commissioner that the above  
23 named Respondent has engaged or is about to engage in an act or practice constituting a violation  
24 of the Securities Act of Montana and therefore hereby orders Respondent to cease and desist any  
25 actions or activity wherein Respondent acts as an unregistered investment adviser representative,

1 and to cease and desist from engaging in any act, practice, or course of business that operates or  
2 would operate as a fraud or deceit upon any person, in violation of §30-10-301, MCA.

3 Section 30-10-306(1), MCA, provides that any willful violation of this cease and desist  
4 order, upon conviction, may be punished by imprisonment for not more than ten (10) years  
5 and/or a fine not exceeding five thousand dollars (\$5,000).

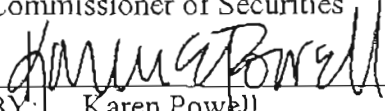
6 NOTICE

7 Respondent is notified that the Commissioner has issued this temporary cease and desist  
8 order. If Respondent wishes to contest the allegations herein, he shall make a written request for  
9 a hearing to Roberta Cross Guns of this office within fifteen (15) days of receipt of this order.  
10 The hearing shall then be held within thirty (30) days of the Commissioner's receipt of the  
11 hearing request unless otherwise agreed by the parties. If no hearing is requested within fifteen  
12 (15) days of receipt of this order by Respondent, and the Commissioner orders none, this order  
13 shall become permanent.

14 Should you request a hearing, you have the right to be accompanied, represented and  
15 advised by counsel. If the counsel you choose has not been admitted to the practice of law in the  
16 State of Montana, he or she must comply with the requirements of Application of American  
17 Smelting and Refining, Co., 164 Mont. 139, 520 P.2d 103 (1973).

18 DATED this 15<sup>th</sup> day of November 2004.

19 JOHN MORRISON  
20 State Auditor and  
Commissioner of Securities

21   
22 BY: Karen Powell  
23 Deputy Securities Commissioner  
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